

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA**

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

MFA.No. 884 of 2001(B)

OPMV.690/1998 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, TRICHUR
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APPELLANTS: PETITIONERS

- 1. TAS, S/O. THOMAS, ILLIKKAL HOUSE,
5/596, KADAVALLUR PANCHAYATH,
P.O. KARIKAD, (VIA) KURUKKANKUNNU,
THRISSUR DISTRICT.**
- 2. CICILY THOMAS, W/O. THOMAS,
P.O. KARIKKAD, THRISSUR.**

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS: RESPONDENTS

- 1. CHIRAYIL KOYA, CHIRAYIL HOUSE,
TANUR, RARIMANGALAM,
MALAPPURAM DISTRICT.**
- 2. KABIR, S/O. KUNJU, CHIRAYIL HOUSE,
NEAR L.P.SCHOOL DO. DO.**
- 3. THE ORIENTAL INSURANCE CO. LTD.,
CKH BLDGS. THAZHEPALAM, TIRUR.**

**BY ADV. SRI.MOHAMMED FAIZAL.M.P.
SRI.GEORGE CHERIAN (THIRUVALLA)**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 29/11/2007 ,THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

J.B. KOSHY & K.HEMA, JJ.

M.F.A.No. 884 of 2001

Dated this the 29th day of November, 2007

Judgment

Koshy, J.

Claimant suffered serious injuries in a road traffic accident occurred at 9.00 a.m. on 2.11.1997. Since the claimant was unable to give evidence or conduct the case properly, tribunal allowed his mother also to be impleaded as an additional claimant by order in I.A. No.5796 of 2000. According to the claimant, while he was walking along the T.B, road near Sakthan Thampuran Market, Thrissur, he was knocked down by a tempo van bearing registration No. KL/10 A 1258. The tribunal found that the accident occurred due to the rash and negligent driving of the driver of the tempo van and the above tempo van was insured by the 3rd respondent insurance company. However, against a claim of Rs.8,85,500/-, the tribunal awarded Rs.4,25,880/-. Out of the above, Rs.1,12,000/- is reimbursement towards treatment expenses for which bills

were produced. Only quantum of compensation is disputed in this appeal. At the time of accident, appellant was aged 28 years. Tribunal has taken 18 as the multiplier taking guidelines from the second schedule. Even though it was argued that a higher multiplier should be granted considering the increase in life expectancy and decrease in interest rates, we are of the opinion that no interference is required considering the multiplier fixed under second schedule which was taken as a guidelines as held by the Supreme Court in various cases. (See: Smt. Supe Dei and others v. M/s. National Insurance Company Limited and another - JT 2002 (Suppl.1) SC 451 and A.P.S.R.T.C. v. M. Pentaiah Chary - 2007 AIR SCW 5689). According to the claimant, he was employed in a jewellery shop. He produced Ext.A17 certificate issued by Raj Mahal jewellery which shows that his salary was Rs.3,500/- per month. Mother of the appellant who was examined as PW1 has also stated that he was employed in the jewellery. In any event, employment in the jewellery shop was not seriously disputed. But, since the certificate was not proved by examining the person who issued the certificate, only

Rs.1,500/- was assessed as the monthly income. The accident occurred in 1997. He was an earning member employed in a jewellery. Even if Rs.3,500/- was not accepted, at least Rs.2,500/- ought to have been accepted as the monthly income.

2. Now, we will come to the injuries suffered. The tribunal has considered the injuries as follows:

"After the accident the petitioner was taken to Heart Hospital, Thrissur. He had sustained very serious injuries. There were deep lacerated wounds on the lower jaw multiple lacerated wound on the left hand with exposure of bone and tendon. The left femur was fractured. There was fracture to the base of skull and there was right frontol parietal subdural haematoma. There was subarchnoid haemorrhage. Both maxilla were also fractured. There was bleeding from both ears. The upper canine teeth were also lost. CT scan confirmed fracture to the base of skull and fracture to the maxilla. There was brain stem injury with diffused oedema with subarchnoid haemorrhage and subdural haemorrhage. He had undergone treatment till 29.12.1997. The medical records would reveal that he was unconscious for about 30 days. Later, he was treated at Amala Hospital as evident from Ext.A7 series discharge summaries. He had undergone treatment there from 4.5.1998 to 8.5.1998 and also from 25.5.1998 to 8.6.1998. This admission was to correct the post-traumatic facial

palsy. He had undergone surgery for skin grafting and a surgery on the upper eye lid since his eye lids did not close after the accident."

Thereafter, the tribunal has also found as follows:

"I had occasion to see the petitioner on the date of trial. Now, he is totally incapacitated. He cannot remember the past fully. He has altered and blurred speech. His hearing capacity is also impaired. He has loss of vision to the left eye. He can walk only with the assistance of another person. A good number of certificates are produced from the side of the petitioner from various doctors to prove his present disability. Ext.A8 is the certificate issued by the psychiatrist of the Elite Mission Hospital which states that he needs continued medication. It is also stated in the certificate that full recovery is too remote. It is also stated that there are behaviour disturbances and it may reoccur since there is damage to the frontal and temporal regions of the brain. The damage to the temporal and frontal lobes of brain are confirmed by Ext.A15 scan report. It is also stated in the said certificate that proper education has to be given to his mother and wife (but it has come out in evidence that his wife has deserted him after the accident) about the disabilities. Ext.A9 is the certificate issued by the Ophthalmologist which states that he is having paresis of orbicularis oculi in the left eye. An implant is placed on the left upper eye lid to make the eye lid closed. But, it was not successful. It is also revealed from the said certificate that he is having diplopia (double vision)

in some position. It is further stated that he is having convergence insufficiency. The left eye has temporal pallor of the disc and muscular degeneration. There is loss of vision to the left eye and it is due to the optic atrophy consequent to the injuries sustained by him in the accident. Ext.A10 is the audiogram report and Ext.A11 is the certificate issued by the ENT surgeon which stated that he has severe hearing loss to the left ear and mild hearing loss to the right ear."

Ext.A12 is the disability certificate issued by Orthopaedic Surgeon assessing 11.9% orthopaedic disability. Ext.A13 is the certificate issued by the plastic surgeon of the Amala Hospital which shows that he would require repeated expensive surgery for his facial correction. After considering the various disability certificates produced, the tribunal found that the disability is 62%, but, at the same time, the tribunal found that he was permanently disabled and he is not active in future.

The tribunal found as follows:

"There cannot be any dispute that apart from being permanently disabled, the petitioner has no active future left for him. It was stated by PW1 that his wife has deserted him after the accident. He is almost like a vegetable and he needs life long support of medicines and a by-stander. So, undoubtedly, the injuries have affected his future amenities in life also."

We are of the view that considering the injuries, his earning power is completely lost. He will not get any employment with these injuries. Therefore, we are of the opinion that he is entitled to 100% compensation for the disability and loss of earning capacity. If that be so, compensation for disability and loss of earning capacity will be $\text{Rs.}2500 \times 12 \times 18 = \text{Rs.}5,40,000/-$. The tribunal has granted $\text{Rs.}2,00,880/-$ on this count. So, additional compensation will be $\text{Rs.}3,39,120/-$. He need continued help of a by-stander and continued treatment. Taking all these together, for bystander's expenses, future treatment and for loss of amenities, only $\text{Rs.}50,000/-$ was awarded and according to the claimant it is very inadequate. Considering the interest that is payable on the total compensation, we are not making any enhancement in the compensation granted under other heads. Therefore, the additional amount of $\text{Rs.}3,39,120/-$ should be deposited by the third respondent insurance company with 7% interest from the date of application till its deposit over and above the decreed amount by the tribunal. Out of the above amount, $\text{Rs.}1,00,000/-$ shall be reimbursed

to the appellants. Balance shall be deposited in fixed deposited in a nationalised bank and appellants are entitled to get quarterly interest.

**J.B.KOSHY
JUDGE**

**K. HEMA
JUDGE**

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 884 of 2001

Judgment

Dated:29th November, 2007